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FEDERAL ELECTION COMMISSION
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March 31, 1993

Federal Election Commission
999 E Street, NW
Washington, DC 20463

**Re: Additional Comments on Advisory Opinion
Request 1993-3**

Dear Commissioners:

These comments are submitted on behalf of Democrats 2000 in response to the General Counsel's proposed drafts of Advisory Opinion 1993-3. One alternative proposed by the Office of the General Counsel would deny Democrats 2000's request to reimburse its federal account on a one-time basis. This result runs contrary to the Commission's earlier opinions reflecting the Commission's official position that "the allocation regulations represent significant revisions in past practice and require a brief period of adjustment, i.e., the current [1991-1992] election cycle, for political committees acting in good faith". Advisory Opinion 1992-2; see also Advisory Opinion 1992-27.

The circumstances presented here are not distinguishable in any significant way from those in Advisory Opinions in which the Commission has granted the request for reallocation. The issues faced by Democrats 2000 in accommodating its program to address the reporting requirements of the new regulations and the Committee's "good faith" efforts to resolve them make this sort of one-time correction particularly suitable.

1. Democrats 2000 described in detail its efforts to comply with the regulations, including seeking Commission and outside legal assistance. Moreover, except for a short period in 1991, Democrats 2000 exercised an option available under the regulations -- use of federal funds -- to ensure that no illegal expenditures were made.

The General Counsel's draft states that the proposed adjustments here are distinguishable from those in prior requests because they involve general difficulties with the regulations rather than more specific problems over a shorter period of time. But, Democrats 2000's request is also

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confined to a specific time period and raises specific difficulties in adjusting to the new regulations.

Indeed, these circumstances are not significantly different than those presented in Advisory Opinion 1992-27 where a national Republican party committee, with vastly greater financial resources and staff than Democrats 2000, argued that it "did not have an accounting and reporting system in place that could accommodate the new regulations and reporting requirements". Based on this deficiency, the NRSC was unable to correctly allocate its expenses for a period from January 1, 1991 through February 29, 1992, almost the identical time period covered in Democrats 2000's request. Five months later, the party submitted its advisory opinion request. The general difficulty in developing an accounting and reporting system to accommodate the new allocation regulations, the time period involved, and the length of time between the discovery of the difficulty and the submission of the advisory opinion request were virtually the same in both cases.

Democrats 2000's request also reflects the unique difficulty that Democrats 2000 had in adapting its recordkeeping and reporting system to the new allocation rules. As the Committee reflected in its response to the Commission dated February 23, 1993, the activities undertaken by the Committee do not neatly fit into the categories set out by the Commission in its regulations, making it difficult to develop an accurate system. Democrats 2000 conducts only minimal activities that benefit specific candidates, directly or indirectly, on either the federal or nonfederal level.

For example, two of Democrats 2000's principal activities are issue forums featuring elected officials and distribution of a newsletter on Democrats 2000's issue programs and other events. These activities do not directly support either federal or nonfederal candidates; nor are they clearly fundraising or administrative expenses. As a consequence, implementation of its current procedures took considerable time to develop.

Compliance with the new regulations was particularly difficult since none of the allocation methods proposed by the Commission are easily adaptable to the Democrats 2000 programs. Absent direct or indirect support of federal or nonfederal candidates, it is difficult for a committee to

determine precisely how its receipts or disbursements should be allocated. Nevertheless, the Committee has successfully developed a procedure during the "adjustment period" to fully comply with the regulations. Developing these procedures has required not only the expenditure of considerable staff time, but also funds in seeking outside legal assistance.

2. The draft also questions why Democrats 2000 did not seek assistance from the Commission in its efforts to comply with the regulations. Democrats 2000 has sought the assistance of the Information Division of the Commission. While this assistance has been helpful, it has not always clarified some of the thorniest issues presented under the regulations. On occasion, the staff was unable to provide answers to the Committee's questions -- for example, on the issue of reporting the allocation of in-kind contributions. This is understandable given the period of adjustment the Commission itself has acknowledged is necessary to accommodate the transition to these regulations.¹

3. Finally, the General Counsel's draft questions why Democrats 2000 was not able to submit its request earlier. The Committee made every effort to resolve this issue and make its request as quickly as possible. Moreover, in the interim, it erred on the side of caution using federal funds to avoid any prohibited use of nonfederal funds or violation of the Act.

Democrats 2000 is a small organization with a limited budget and only two full-time staff, a director and assistant. In fact, for several months in 1991, the director was on leave from the organization, delaying the resolution of many administrative matters.

The Committee's first priority was to develop a procedure to record and allocate expenses effectively. Once this system was in place, the Committee turned its attention to recalculating the allocations from January, 1991 through May, 1992. In order to ensure that the allocation issues and


¹In fact, the Commission itself found a need to make revisions in its Supplement on Allocation. This revised Supplement was released in December, 1992, approximately the same time Democrats 2000 made its request.

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figures presented to the Commission in this request were totally accurate, the Committee staff embarked on a detailed review of its records. The review took months to complete because of the time period involved, the small staff available to conduct such a review, and the pressure of election activities during 1992.

The Committee did not want to approach the Commission until it had completed this review and determined precisely the nature of its request. Unlike other requestors, the Committee is not asking for the transfer of an undetermined amount, but a precise amount that was calculated based on this thorough review. As a consequence, the committee does not require 30 days, as suggested in the alternative draft, to amend reports and attend to other administrative matters; it is prepared to make the transfer and file any required reports within a shorter period after the Commission's action on this issue.

Sincerely,



Robert F. Bauer
B. Holly Schadler

cc: Lawrence M. Noble, General Counsel
N. Bradley Litchfield, Associate General Counsel
Jonathan M. Levin, Senior Attorney

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